

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

CHALLENGE UNLIMITED, INC., RESIDENTIAL
OPTIONS, INC., AND SPECIALIZED PROFESSIONAL
SERVICES, INC., d/b/a ALPHA INDUSTRIES

Employer¹

and

Case 14-RC-12496

AFSCME COUNCIL 31, AFL-CIO (AMERICAN
FEDERATION OF STATE, COUNTY & MUNICIPAL
EMPLOYEES COUNCIL 31)

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer consists of three Illinois corporations whose shared mission is to help individuals with disabilities participate more fully in their communities through job training, job placement, and independent living assistance. The Employer operates group homes, provides developmental training, and directly employs individuals to work at businesses pursuant to service contracts with state, federal, and community clients located in Illinois, Missouri, and Wisconsin.

The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a multilocation unit of approximately 240 of the Employer's non-professional employees working at 28 sites

¹ The Employer's name appears as amended at hearing. At hearing and in their briefs, the parties have treated Challenge Unlimited, Inc., Residential Options, Inc., and Specialized Professional Services d/b/a Alpha Industries, Inc., as a single employer. The record demonstrates common management, centralized control over labor relations, common financial management including commingling of finances, and operational integration. Accordingly, I find that the three corporations are a single employer for purposes of collective bargaining within the meaning of Section 2(2) of the Act.

in Illinois. A hearing officer of the Board held a hearing, and the parties filed briefs with me, which I have carefully considered.

As evidenced at the hearing and in the briefs, the parties disagree on whether the unit must include non-professional employees working at all 42 of the Employer's sites. The Employer contends that the multilocation unit sought by the Petitioner inappropriately excludes employees working at four sites in Scott Air Force Base, Illinois, six sites in Springfield, Illinois, two sites in St. Louis, Missouri, and two sites in Ft. McCoy, Wisconsin. All but three sites in Springfield, Illinois involve employees performing work pursuant to a federal contract. The other three sites in Springfield involve employees performing work pursuant to contracts with the State of Illinois. There are approximately 370 employees in the broader unit urged by the Employer.² I have considered the evidence and arguments presented by the parties on this issue. As discussed below, I have concluded that the multilocation unit sought by the Petitioner does not represent a sufficiently distinct group of employees and is therefore not an appropriate unit. Accordingly, I have directed an election in an employer-wide unit of all the Employer's non-professional employees.

I. OVERVIEW OF OPERATIONS

The Employer provides services and support for individuals with disabilities through Challenge Unlimited, Inc. (Challenge), Alpha Industries (Alpha), and Residential Options, Inc. (Residential). Together, these operations provide complementary services aimed at improving the quality of life for individuals with disabilities. Seventy-five percent of the individuals who receive services through Residential also receive services from

² There are 81 employees at four sites in Scott Air Force Base, Illinois; 20 employees at six sites in Springfield, Illinois; 21 employees at two facilities in St. Louis, Missouri; and 10 employees at two sites in Ft. McCoy, Wisconsin.

Challenge and Alpha.³ The corporate headquarters for all three corporations is located in one administrative building in Alton, Illinois. While each corporation has a president/ceo and a nine-member board of directors, the same individuals hold the same positions for all three corporations. There are six vice presidents whose various duties encompass all three corporations. There is common administrative and operational management that includes centralized accounting, payroll, and purchasing functions. A central human resources department conducts hiring and training and handles personnel issues for all three corporations. Job openings for all three corporations are posted in a single document that is distributed to all employees on a weekly basis. Though each corporation has its own employee handbook, the personnel and disciplinary policies in the handbooks are nearly identical, with any differences relating mainly to wages and benefits. All employees can invoke the same basic grievance procedures.

Though employees share the same overall supervision, there are local managers who possess significant autonomy. The local managers participate in the hiring process for higher-level positions. They can discipline employees without consulting the human resources department. Approximately 75 percent of the time, the human resources department follows a local manager's recommendation for termination without conducting any independent investigation. All of these local managers receive similar training and rely upon a common manual that provides clear guidelines for addressing disciplinary issues. The local manager also performs all employee evaluations, monitors attendance, and approves vacation requests.⁴ With respect to employees working pursuant to a service contract, the local manager's discretion with respect to the

³ The parties stipulated that "persons receiving services" are excluded from the unit on the grounds that they are not employees.

⁴ The Employer uses the same form to evaluate Challenge and Alpha employees, but a different form for Residential employees.

direction of the work may be circumscribed by contractual terms regulating the manner in which the work is to be performed.

Since July 2003, the Employer has temporarily transferred employees from one location to another location on 18 occasions. There have been six permanent location transfers since 2002. It appears that most, if not all, of the temporary and permanent transfers were made at the employee's request.

A. Challenge and Alpha

The Employer utilizes employees and persons receiving services to work at area businesses pursuant to contracts with state, federal, and community customers through Challenge and Alpha. These locations are treated as Employer sites for the purposes of this hearing. The Employer offers a wide variety of services to its customers, including food service, grounds maintenance, janitorial services, document scanning, industrial mail handling, packaging and assembly, clerical work, and recycling.

There are 29 Challenge and Alpha sites at issue in this hearing. Of these, 20 involve employees performing work pursuant to the state and federal contracts and 5 sites involve contracts with community businesses. The remaining four sites include the Employer's developmental training center, vocational rehabilitation center, and administrative office, all located in Alton, Illinois, and a developmental training center located in Swansea, Illinois.

The types of services provided under the 11 federal contracts include groundskeeping, food service, recycling, and janitorial and custodial services. The groundskeeping services provided include mowing, weeding, laying sod, fertilizing, snow removal, and other lawn maintenance services. The food services contracts involve the operation of dining halls by service attendants, dishwashers, cooks, and cashiers to provide three meals a day, 365 days per year at Scott Air Force Base, Illinois and Ft. McCoy, Wisconsin.

The Employer also has contracts with the State of Illinois to provide janitorial services at a total of nine Illinois sites in East St. Louis, Alton, Highland, Mascoutah, and Springfield. Employees also provide janitorial and mailroom contract services for community businesses at four sites in Granite City, Illinois and one site in Wood River, Illinois.

B. Residential Options

The Employer provides housing opportunities and independent living skills training for individuals with disabilities through the operation of 13 group homes located in Madison County, Illinois. These residences offer varying levels of supervision; five are intermediate care group residences. The record contains very little information about the non-professional employees at these locations. The job classifications in the petitioned-for unit working at these sites include community support/mental health workers, cooks, and hab techs.

C. Wages and Benefits

There are significant differences in the wages and benefits received by the Employer's various non-professional employees. Some are eligible to participate in the Employer's insurance and 401(k) plans, while others cannot. Some receive more paid holidays and more vacation days than others. All the hourly employees receive one funeral day.

1. Hourly Employees

With respect to wages, the record does not reflect the wage rates for all the Employer's non-professional employees. However, it is clear that employees performing service work under federal contracts receive higher wages than their counterparts performing the same tasks for state and community clients. Wage rates for federal contracts are determined by federal wage determination rates for each job classification. Similarly, state contractual wage rates are determined by state prevailing wage

regulations. These contracts set a floor but not a ceiling on wages. The record establishes that the Employer has paid more than the federal mandated contractual wage rate in some cases. The terms of the contracts with community clients may also impact wage rates. For other hourly non-professionals, the Employer's human resources department sets the wages in accordance with budgetary considerations, local market wage rates, and current pay practices. The Employer's president determines the amount of all raises.

In addition to the minimum federal wage rates, the federal contracts require the Employer to contribute a certain amount toward an Employer-supplied insurance plan which includes life, health, dental, vision, short-term disability, and supplemental accident insurance. Hourly employees working for Challenge or Alpha do not receive any insurance benefits. However, hourly employees working for Residential can participate in the Employer's insurance and 401(k) plan after satisfying an eligibility period.

Holiday pay, sick pay, and vacation benefits are not uniform. Alpha and Challenge employees receive eight paid holidays; Residential employees receive seven paid holidays. Federal contract employees receive 10 paid holidays. Residential hourly employees receive 6 sick days every year, while Alpha and Challenge employees do not. Challenge and Alpha hourly employees can earn a maximum of 2 weeks of vacation per year, regardless of the number of years worked, based upon the average hours worked per week by the employee, excluding overtime hours. Residential employees, however, earn 1 week of vacation after their first year, 2 weeks after their second year, and three 3 after their fourth year anniversary. Additionally, employees working under a federal contract receive 2 weeks of vacation after 1 year, 3 weeks after 5, and 4 weeks after 15 years.

2. Salaried Employees

Though the record does not reflect the number of salaried non-professionals, or the amount of their salaries, some of the Employer's non-professional employees whom the Petitioner seeks to represent are Challenge salaried employees who receive more benefits than the hourly employees. Salaried Challenge employees receive life, health, dental, short and long-term disability insurance, 401(k), 10 paid holidays per year, 4 personal days, and between 8 and 12 sick days, depending upon the employee's length of service. They are entitled to 2 weeks of vacation after 1 year, 3 weeks after 5, and 4 weeks after 10 years.

II. THE SCOPE OF THE UNIT

This case presents the issue of whether a petitioned for multilocation unit including some, but not all, of the Employer's separate sites is an appropriate unit for bargaining. When, as here, the Union seeks a multilocation unit, the presumption of appropriateness that applies when a single facility unit is sought has no application.⁵ Thus, the Petitioner must demonstrate that its requested unit is not an arbitrary grouping of employees. The critical inquiries are whether the included employees share a sufficient community of interest, and whether the interests of the excluded employees are sufficiently distinct to warrant the establishment of a separate unit. *Newton-Wellesley Hospital*, 250 NLRB 409, 411 (1980). *Acme Markets, Inc.*, 328 NLRB 1208 (1999).

The Board's community of interest inquiry evaluates the similarity of employees' skills, duties, and working conditions; functional integration and employee interchange; geographic proximity; centralized control of management and supervision; and bargaining history. See *Alamo Rent-A-Car*, 330 NLRB 897, 897-898 (2000). The parties

⁵ The Petitioner's reliance upon the single-facility presumption is misplaced because the Petitioner requested a multilocation unit, not constituting a single facility.

agree that no bargaining history exists here. Upon consideration of the balance of salient factors, I conclude that the requested unit is an arbitrary grouping inasmuch as the evidence fails to establish that this particular subset of locations comprises a sufficiently homogenous, identifiable, and distinct group. See *Bashas', Inc.*, 337 NLRB 710, 711-712 (2002). In doing so, I accord significant weight to the wide range of job duties, skills, wages, and benefits among employees included in the requested unit.

Here, the requested unit includes job classifications that seem to require a distinctly different set of training and qualifications. For example, employees working as special needs supervisors, mental health workers, alternative service supervisors, and case managers presumably perform different tasks than employees providing janitorial services. The difference in wages and benefits received by the different non-professionals in the requested unit reflects this variety.

The locations in the Petitioner's requested unit do not share common local supervision or conform to any coherent geographic cluster. See's *Candy Shops, Inc.*, 202 NLRB 538, 539 (1973). To the contrary, the requested unit excludes several sites in St. Louis, Missouri and Scott Air Force Base, Illinois, which are closer to some included sites than certain included locations are from other included locations.⁶ In sum, there is no factor or set of factors that sufficiently distinguishes the requested unit of nonprofessionals as a separate, identifiable group.

The Petitioner argues that federal contract employees cannot share a community of interest with the other non-professionals because they receive mandated higher wages and insurance benefits. However, the Petitioner's inclusion of salaried and hourly non-professionals who also receive insurance benefits and presumably higher wage

⁶ For example, the I-64 rest stop is 58 miles from the Dial Warehouse. These are both sites that the Petitioner seeks to include in the unit. However, the Petitioner seeks to exclude a St. Louis, Missouri site that is only 21 miles from an included site. The Petitioner seeks to exclude four sites at Scott Air Force Base, which are located only 11 miles from the included I-64 rest stop.

rates diminishes the significance of its argument.⁷ Regardless, the fact that these employees may receive higher wages and additional benefits does not preclude them from sharing a community of interest with other employees. *Huckleberry Youth Programs and Service Employees International Union*, 326 NLRB 1272, 1274 (1998) (difference in wages and benefits is not a sufficient basis for excluding employees).

While the Petitioner emphasizes the federal government's authority to revoke an employee's security pass, the Employer's state and community clients also possess the right to request an employee's removal. Moreover, these federal contract employees are subject to the same overall supervision and centralized, uniform administration of the Employer's labor and personnel policies as are the other included employees. The federal contract employees possess similar skills and perform the same types of work as other included employees. In fact, the federal contract employees appear to share a greater community of interest with the other included service contract employees than employees working at the Residential sites, whom the Petitioner seeks to include, share with these included employees. Similarly, the state contract employees working at the three sites in Springfield, Illinois, whom the Petitioner seeks to exclude, share an even greater community of interest with other included state contract employees than do the Residential employees. The state contract employees at the Springfield sites are subject to the same compensation scheme as the other state contract employees in the requested unit. Thus, Petitioner has failed to establish that employees in the unit limited to its requested sites share a community of interest distinct from that shared by employees at all of the Employer's locations. *Bashas', Inc.*, *supra.*; *Montefiore Hospital and Medical Center*, 261 NLRB 569 (1982).

⁷ The record fails to reflect the wages of the salaried non-professionals or the hourly employees receiving insurance.

Where, as here, a petitioned-for, multilocation unit is not appropriate, the Board examines alternative units suggested by the parties. However, the Board is not limited to the parties' alternatives or constrained by any presumption in favor of any particular unit. The Petitioner urges me to select the smallest appropriate unit though it failed to propose an alternative unit. In light of the factors described above and given the presumptive appropriateness of an employer-wide unit, I shall direct an election in a unit including all of the Employer's non-professional employees at all of its sites.⁸ *Montefiore Hospital and Medical Center*, supra. I am aware that the two Wisconsin sites are approximately 450 miles from the Alton, Illinois headquarters. The effect of this distance is minimized by the lack of any significant temporary or permanent interchange between any of the Employer's locations.⁹ *Alamo Rent-a-Car*, 330 NLRB at 898. Notwithstanding the geographic separation, these employees share a community of interest with and a lack of distinction from, the other locations such that they should be included in the unit found appropriate. See *Acme Markets, Inc.*, supra.

III. FINDINGS AND CONCLUSIONS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

⁸ As the unit found appropriate is larger than requested, in the event the Petitioner does not wish to proceed with an election, it may withdraw the petition without prejudice by notice to the Regional Director within 7 days from the date of this decision. *Atlanta Hilton & Towers*, 275 NLRB 1413 fn. 3 (1985).

⁹ Here, there are not a significant number of transfers between locations. Moreover, the vast majority of transfers were made pursuant to an employee's request. Voluntary transfers, such as those transfers initiated by employees for personal convenience or benefit, are of limited significance for purposes of our analysis. See, e.g., *Red Lobster*, 300 NLRB 908, 911 (1990).

3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer, EXCLUDING persons receiving services, office clerical and professional employees, guards and supervisors as defined in the Act.¹⁰

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by: AFSCME Council 31, AFL-CIO (American Federation of State, County & Municipal Employees Council 31).

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are

¹⁰ In accordance with the parties' stipulations at hearing, I shall exclude one informational service technician named Ian Trousdale, include case managers Carla Synder and Sharon Taylor, and permit technician Kristen Magee and operations specialist David Sirous to vote subject to the challenge procedure.

eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **April 28, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with

this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794 or by electronic mail at Region14@nrlb.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570-0001. This request must be received by the Board in Washington by **May 5, 2004**. The request may not be filed by facsimile.

Dated: April 21, 2003
at: Saint Louis, Missouri

/s/ [Ralph R. Tremain]

Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14